

ATTACHMENT A - Complaint

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KING COUNTY
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CASE #: 18-2-56702-5 SEA

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

ERIC McCURDY,)	
)	
Appellant/Plaintiff,)	
)	NO.
v.)	
)	APPEAL FROM DECISION OF
SEATTLE SCHOOL DISTRICT,)	SCHOOL OFFICIALS AND
)	COMPLAINT FOR DAMAGES
Respondent/Defendant.)	AND OTHER RELIEF
)	

NOW COMES Eric McCurdy, by his attorney Judith A. Lonnquist, and pursuant to RCW 28A.645.010, files this appeal from the decision of the Superintendent of the Seattle School District rendered on or about November 20, 2018. Appellant/Plaintiff (hereinafter referred to as "Appellant") also brings this action for redress of violations of his Constitutional rights and other civil wrongs. Complaining of Respondent/Defendant District (hereinafter referred to as "Respondent"), Appellant states as follows:

1. Appellant Eric McCurdy is a resident of Seattle, Washington, in King County.
2. Respondent Seattle School District is also in King County.

1 3. Appellant is the Executive Director of Athletics who has been employed by Respondent
2 District since November 1, 2010, and who has been terminated without cause and in violation of
3 his Constitutional and civil rights, effective December 31, 2018. At all times, Appellant's
4 performance has been excellent and his accomplishments on behalf of students have been
5 exemplary. Appellant is an African American male.

7 4. On November 2, 2018, Respondent District issued notification of potential termination of
8 employment, setting forth three reasons:

9 • The new Superintendent (Denise Juneau) has read the full investigative report on KB
10 (Krystyana Brame) and has concerns about the comments found to be made and your
11 ability to appropriately (sic) lead a program that requires daily student, staff and parent
interactions;

12 • Unfavorable public attention on the District based on the KB (Krystyana Brame)
13 report and settlement; and

14 The Superintendent has concerns about your continued ability to interact professionally
15 with other District staff, even after the KB (Krystyana Brame) report was issued.

16 5. In November 2015, two disgruntled employees in the Athletic Department, as each was
17 leaving the District's employment, filed a charge against Appellant, claiming that he had violated
18 the District's Policy No. 3207 regarding Harassment, Intimidation, and Bullying ("HIB policy").
19 The policy governs only behavior that "Is so severe, persistent or pervasive that it creates an
20 intimidating or threatening ...work environment."

21 6. Rather than retaining an independent investigator, Respondent assigned the investigation
22 to one of its employees, Jason Dahlberg. Although Mr. Dahlberg requested that Appellant
23 submit names of individuals whom Mr. Dahlberg such interview regarding the allegations
24 against Appellant, which Appellant submitted, Mr. Dahlberg failed to interview all but a few of
25 said individuals. Respondent subsequently acknowledged that an independent investigator
26 should have been used. On June 20, 2016, Respondent's HR Department found no violation of

1 the HIB policy. Thereafter, Ms. Brame exercised her right of appeal from the “nonfinding” On
2 July 28, 2016, Respondent’s Deputy Superintendent Stephen Nielsen responded to her appeal
3 stating that the use of “vulgar and profane comments” would not be tolerated and Appellant
4 would be counseled regarding such behavior. Mr. Nielsen informed Ms. Brame that: “This is a
5 final decision of the District,” and that she could appeal the decision to Superior Court within 30
6 days. She did not file an appeal. Thus the District’s decision became final as of August 2016.
7

8 7. Ms. Brame then filed a charge of sex discrimination with the U.S. Equal Employment
9 Opportunities Commission (“EEOC”). The EEOC investigated the charge and found no cause to
10 believe discrimination had occurred. Thereafter, Ms. Brame retained counsel and filed a
11 discrimination lawsuit.

12 8. Despite the EEOC’s no-cause finding and the lack of any substantial evidence of sexual
13 harassment or retaliation, and over Appellant’s objection and request that he be entitled to his
14 day in court to disprove her allegations, Respondent agreed to pay Ms. Brame \$500,000 to settle
15 her claim on September 13, 2018. It did so without obtaining a nondisclosure agreement from
16 Ms. Brame.
17

18 9. On information and belief, in the absence of a nondisclosure agreement, Ms. Brame took
19 steps to notify the media of her settlement, and on November 1, 2018, the Seattle Times
20 published a story repeating Ms. Brame’s unsubstantiated allegations that “her former boss,
21 Executive Director of Athletics Eric McCurdy, discriminated and retaliated against her and made
22 sexually explicit comments on the job.”
23

24 10. The following day, Respondent sent Appellant notice of potential termination, citing,
25 *inter alia*, “unfavorable public attention” brought on by the Respondent’s unjustified settlement
26 and inept failure to insist upon nondisclosure as a condition of settlement.

11. A pre-termination hearing was conducted on November 16, 2018, at which Appellant presented his case why he should not be terminated. Such hearings are mandated by the U.S. Supreme Court as a public employee's Constitutional right to convince the decision-maker not to terminate his employment. *Cleveland Board of Education v. Loudermill et al.*, 470 U.S. 532, 105 S. Ct. 1487 (1985). The decision-maker, Superintendent Juneau, did not attend. On November 20, 2018, Superintendent Juneau terminated Appellant's employment, effective December 31, 2018.

12. Superintendent Juneau is a school official of Respondent District, within the meaning of RCW 28A.645.010.

13. The decision of School Superintendent jeopardizes Appellant's educational and career opportunities and has a stigmatizing impact upon him.

COUNT I

Appellant is entitled to a hearing *de novo* before this court pursuant to RCW 28A.645.010 and .030.

COUNT II

The acts and conduct of the School District have deprived Appellant of property rights without due process, in violation of the Constitution of the United States and the Constitution of the State of Washington.

COUNT III

The acts and conduct of Respondent School District have deprived Appellant of liberty interests, in violation of the Constitution of the United States and the Constitution of the State of Washington.

COUNT IV

Respondent has negligently inflicted emotional distress upon Appellant.

COUNT V

Respondent has engaged in negligent supervision of its officials.

WHEREFORE, Appellant respectfully requests that this Court review and reverse the actions and decisions of the school officials of Respondent District, and restore him to his position as Executive Director of Athletics. Appellant also seeks the following additional relief:

- a. Economic damages in an amount to be proven at trial;
- b. Reputational and emotional distress damages in amounts to be proven at trial;
- c. Attorney's fees and expenses;
- d. Injunctive and other remedial relief;
- e. Costs of litigation; and
- f. Such other relief as the Court deems appropriate.

Dated this 7th day of December, 2018.

LAW OFFICES OF
JUDITH A. LONNQUIST, P.S.



Judith A. Lonnquist, WSBA #06421
Attorney for Appellant Eric McCurdy